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Chicago IL 60690-2798

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**NOV 16 2005**

**OFFICE OF PETITIONS**

In re Application of	:	
Vicars, et al.	:	ON PETITION
Application No. 10/764,902	:	
Filed: January 26, 2004	:	
Attorney Docket No. 926512-95493	:	

This is a decision on the petition under 37 CFR 1.181, filed July 11, 2005 (certificate of mailing date July 7, 2005), requesting withdrawal of the holding of abandonment.

The petition is **DISMISSED**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely submit a reply to the December 1, 2004 non-final Office action, which set an extendable three month period for reply. Accordingly, the above-identified application became abandoned on March 2, 2005. A Notice of Abandonment was mailed on June 10, 2005.

An allegation that an Office action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed. The showing required to establish non-receipt of an Office communication must include:

1. A statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received.
2. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in

practitioner's statement.<sup>1</sup>

A review of the record indicates no irregularity in the mailing of the December 1, 2004 non-final Office action, and in the absence of any irregularity there is a strong presumption that the communication was properly mailed to the applicants at the correspondence address of record. This presumption may be overcome by a showing that the aforementioned communication was not in fact received.

The showing in the instant petition is not sufficient to withdraw the holding of abandonment because practitioner appears not to be practicing at the correspondence address of record. The address listed at the bottom of the petition is:

James B. Conte  
BARNES & THORNBURG  
P.O. Box 2786  
Chicago, IL 60690-2786

The December 1, 2004 non-final Office action was properly mailed to correspondence of record, which is:

James B. Conte  
BARNES & THORNBURG.  
P. O. Box 2798  
Chicago IL 60690-2798

The fact that practitioner did not receive the December 1, 2004 non-final Office action at P.O. Box 2786 does not warrant withdrawal of the holding of abandonment, as P.O. Box 2786 is not part of the correspondence address of record. P.O. Box 2798 is part of the correspondence address of record. An applicant is required to keep the Office informed of correspondence address changes. Any delay in prosecution due to a failure to inform the office of a correspondence address change is delay attributed to the applicant.

Petitioners may wish to file a petition to revive under 37 CFR 1.137(b) – the unintentional standard. Since petitioners allege non-receipt of the December 1, 2004 non-final Office action, a copy is enclosed. A necessary component of a petition to revive under 37 CFR 1.137(b) is a reply to the December 1, 2004 non-final Office action.

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<sup>1</sup> See notice entitled “Withdrawing the Holding of Abandonment When Office Actions Are Not Received,” 1156 O.G. 53 (November 16, 1993).

Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

**By hand:** U.S. Patent and Trademark Office  
Customer Service Window, Mail Stop Petition  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

**By FAX:** (571) 273-8300 - ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



E. Shirene Willis  
Petitions Attorney  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

Enclosure: copy of December 1, 2004 non-final Office action

cc: JAMES B. CONTE  
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